

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

06/14/2001

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2000-001932

FILED: _____

STATE OF ARIZONA

B DON TAYLOR

v.

TRACY LYNN DUVALL

PHILLIP D HINEMAN JR

PHX MUNICIPAL CT
REMAND DESK CR-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. #5442867

Charge: 1: DUI-ALCOHL

DOB: 03/31/70

DOC: 03/26/98

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Sections 16 and A.R.S. Section 12-124(A). This case has been under advisement and the Court has considered and reviewed the record of the proceedings from the Phoenix City Court, the memoranda submitted by counsel and the oral argument presented to the Court on June 11, 2001.

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Appellant claims that the trial court erred in denying her Motion for a New Trial pursuant to Rule 24.1, Arizona Rules of Criminal Procedure, and her Motion to Vacate Judgment pursuant to Rule 24.2, Arizona Rules of Criminal Procedure. The State correctly points out that the Appellant's request for relief is based upon Rule 24.2(A)(2) newly discovered evidence. Appellant was convicted after a jury trial on April 16, 1999 in the Phoenix City Court of Driving While Under the Influence of Alcohol in violation of A.R.S. Section 28-1381(A)(1), a class 1 misdemeanor offense.

In her Motion for New Trial and to Vacate Judgment, Appellant claimed that since the date of her trial, her attorney has become aware of "deficiencies concerning the maintenance of storage records pertaining to the intoxilyzer 5000". Appellant's memorandum at page 2. Appellant claims that faulty calibration checks and operation error records were deleted from the Arizona Department of Public Safety's information data base.

After oral argument on Appellant's motions the trial court, the Honorable Reginald Kiefer, denied Appellant's motion on June 21, 2000. A Motion for Reconsideration was denied August 16, 2000.

The standard of Appellate review which this Court will use is the abuse of discretion standard. That is, this Court will not reverse a trial court's denial of a Motion to Vacate Judgment unless it appears that the trial judge abused its discretion and acted arbitrarily. State v Kidwell, 106 Ariz. 257, 475 P.2d 241 (1970). The trial court clearly stated that he did not believe that Appellant had met her burden of proof in presenting specific evidence that the breath tests (the results of the intoxilyzer 5000) in this case was faulty or affected by the deficiencies described summarily in the Defendant's motion. R.T. of June 21, 2000 at 7-8, lines 20-7.

This Court notes that Appellant failed to provide Judge Kiefer with specific evidence that the jury's verdict could have

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changed or that the evidence could have been affected by the deficiencies of the Arizona Department of Public Safety's record keeping deficiencies. Appellant has also failed to provide this court with copies of transcripts of the trial so that this Court could determine and evaluate the possible effect upon the other evidence. This Court will presume that the record supports the trial court's findings.

IT IS THEREFORE ORDERED affirming the judgment of guilt and sentence of the Lower Court, and the denial of Appellant's Motion for New Trial and Motion to Vacate Judgment for the reasons stated.

IT IS FURTHER ORDERED remanding this matter back to the Phoenix City Court for all further proceedings.